

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. GREGG BLOCHE, M.D.
4954 Ashby St., N.W.
Washington, DC 20007

and

JONATHAN H. MARKS
637 West Foster Ave.
State College, PA 16801

Plaintiffs,

vs.

Civil Action No. _____

DEPARTMENT OF DEFENSE
1600 Defense Pentagon
Washington, DC 20301-1600;

COUNTERINTELLIGENCE FIELD ACTIVITY
1600 Defense Pentagon
Washington, DC 20301-1600;

DEFENSE ADVANCED RESEARCH
PROJECTS AGENCY
3701 North Fairfax Drive
Arlington, VA 22203;

DEFENSE INTELLIGENCE AGENCY
Washington, DC 20340-5100;

DEPARTMENT OF THE ARMY
101 Army Pentagon
Washington, DC 20310-0101;

DEPARTMENT OF THE NAVY
1000 Navy Pentagon
Washington, DC 20350-1000;

UNITED STATES AIR FORCE
1670 Air Force Pentagon
Washington, DC 20330-1670;

CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505;

and

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE
Washington, DC 20511

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., by experts in bioethics seeking to compel the defendants to release records relating to the participation of doctors and other healthcare professionals in the interrogation of military prisoners and individuals detained by the United States government on the basis of alleged terrorist activities.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiffs M. Gregg Bloche, M.D., and Jonathan H. Marks are experts on bioethics who have written extensively on ethical issues raised by the participation of healthcare personnel in the interrogation of military prisoners and other detainees. M. Gregg Bloche, M.D., is a Professor of Law at Georgetown University Law Center, Adjunct Professor at Johns Hopkins

University's Bloomberg School of Public Health, Non-Resident Senior Fellow at The Brookings Institution, and Visiting Fellow at the Harvard Program on Ethics and Health. Jonathan H. Marks is an Associate Professor of Bioethics, Humanities, and Law at Pennsylvania State University, Director of the Bioethics and Medical Humanities Program at the main campus, University Park, and a barrister and founding member of Matrix Chambers, a leading chambers in London, England. Plaintiffs submitted FOIA requests to all defendants.

4. Defendant Department of Defense (hereinafter "DoD") is an executive department of the United States government and has possession and control of records responsive to Plaintiffs' requests. Defendants Counterintelligence Field Activity (hereinafter "CIFA"), Defense Advanced Research Projects Agency (hereinafter "DARPA"), Defense Intelligence Agency (hereinafter "DIA"), Department of the Army (hereinafter "Army"), Department of the Navy (hereinafter "Navy"), and the United States Air Force (hereinafter "Air Force") are agencies within the DoD. Each of these agencies has possession and control of records responsive to Plaintiffs' requests.

5. Defendant Central Intelligence Agency (hereinafter "CIA") is an agency of the United States government and has possession and control of records responsive to Plaintiffs' requests.

6. Defendant Office of the Director of National Intelligence (hereinafter "DNI") is an agency of the United States government and has possession and control of records responsive to Plaintiffs' requests.

FACTUAL BACKGROUND

FACTS LEADING TO FOIA REQUESTS

7. Press accounts published in 2004 and since that time (some of which were authored by Plaintiffs) have reported that physicians, psychologists, and other healthcare professionals employed by the defendants or working under contract for the defendants have assisted in the design of legally and ethically questionable interrogation tactics, have provided advice or assistance to United States personnel who have employed such tactics on individuals detained by the United States government, and have monitored or performed assessments of detainees' medical and psychological conditions before, during, and after administration of such tactics.

8. Experts in bioethics have questioned the ethics of healthcare professionals' involvement in the administration of physical and psychological pain and suffering, and in the administration of the interrogation tactics at issue.

9. To learn more about the involvement of these professionals, Plaintiffs filed the following FOIA requests.

PLAINTIFFS' FOIA REQUESTS

10. By letter dated June 20, 2006, Plaintiffs submitted a FOIA request (hereinafter "Plaintiffs' First Request") to all defendants. Plaintiffs' First Request sought records addressing: the duties and roles of healthcare personnel involved in interrogations; the policies for healthcare personnel involved in interrogations; the contents of specifically identified videoconferences regarding interrogation strategies; or the legality or ethics of using healthcare personnel in interrogations.

11. By letter dated July 3, 2006, Plaintiffs submitted a second FOIA request (hereinafter "Plaintiffs' Second Request") to all defendants. Plaintiffs' Second Request sought contracts between the defendants and healthcare personnel involved in interrogations, as well as records relating to such contracts.

12. By separate letter dated July 3, 2006, Plaintiffs submitted a third FOIA request (hereinafter "Plaintiffs' Third Request") to all defendants. Plaintiffs' Third Request sought records addressing the use of foreign nationals to assist United States personnel with interrogations, as well as records addressing the legality, ethics, and effectiveness of specific interrogation techniques and programs.

13. By letter dated July 10, 2006, Plaintiffs submitted a fourth FOIA request (hereinafter "Plaintiffs' Fourth Request") to all defendants. Plaintiffs' Fourth Request sought records addressing: research on how government employees, United States service-members, military prisoners, and other detainees responded to certain interrogation techniques; methods of interrogation identified in the document entitled "KUBARK Counterintelligence Interrogation" and any material pertaining to that document; or the legality or ethics of conducting research on certain interrogation techniques.

DEFENDANTS' RESPONSES

Department of Defense

14. To date, the DoD has not issued a determination, nor has it released any records in response to any of Plaintiffs' requests.

Counterintelligence Field Activity

15. In response to Plaintiffs' First Request, the DoD on behalf of CIFA informed Plaintiffs by letter dated December 29, 2006 that the "Counterintelligence Field Activity (CIFA) has conducted searches for records responsive to [Plaintiffs'] requests . . . and has located no responsive records" to Plaintiffs' First Request. Plaintiffs appealed the denial by letter dated February 6, 2007. To date, neither the DoD nor CIFA has responded to Plaintiffs' appeal. To date, neither the DoD nor CIFA has released any records in response to Plaintiffs' First Request.

16. In the same December 29, 2006 letter, the DoD on behalf of CIFA informed Plaintiffs that CIFA "has conducted searches for records responsive to [Plaintiffs'] requests . . . and has located no responsive records" to Plaintiffs' Second or Third Request. The December 29, 2006 letter did not specify whether it was in response to Plaintiffs' Second or Third Request. Plaintiffs appealed the denial by letter dated February 6, 2007. To date, neither the DoD nor CIFA has responded to Plaintiffs' appeal. Neither has released any records in response to Plaintiffs' Second or Third Request.

17. To date, CIFA has not issued a determination, nor has it released any records in response to Plaintiffs' Fourth Request.

Defense Advanced Research Projects Agency

18. To date, DARPA has not issued a determination, nor has it released any records in response to any of Plaintiffs' requests.

Defense Intelligence Agency

19. To date, the DIA has not issued a determination, nor has it released any records in response to any of Plaintiffs' requests.

Department of the Army

20. To date, the Army has not issued a determination, nor has it released any records in response to any of Plaintiffs' requests.

Department of the Navy

21. By letter dated February 12, 2007, the Navy informed Plaintiffs that it was "unable to locate responsive documents" to Plaintiffs' First Request. Plaintiffs appealed the Navy's denial by letter dated March 12, 2007, which was later amended by letter dated March 30, 2007. To date, the Navy has not provided a response to Plaintiffs' appeal, nor has it released any records in response to Plaintiffs' First Request.

22. By letter dated October 25, 2006, the Navy informed Plaintiffs that it was "unable to locate responsive documents" to Plaintiffs' Second Request. Plaintiffs appealed the Navy's denial by letter dated December 19, 2006. To date, the Navy has not responded to Plaintiffs' appeal, nor has it released any records in response to Plaintiffs' Second Request.

23. In response to Plaintiffs' Fourth Request, the Navy informed Plaintiffs by letter dated October 10, 2006 that it was "unable to find responsive documents." Plaintiffs appealed the Navy's denial by letter dated December 7, 2006. By letter dated February 12, 2007, the Navy denied Plaintiffs' appeal.

24. In the Navy's February 12, 2007 letter denying Plaintiffs' appeal, the Navy determined that the "Fleet Aviation Specialized Operational Training Group, Pacific (FASOTRAGRUPAC) is the proper Navy command to respond to [the] request regarding SERE training." Consequently, the Navy forwarded the part of Plaintiffs' request concerning "SERE training" to that command. By letter dated May 4, 2007, the Navy stated that a search by

FASOTRAGRUPAC “did not locate any responsive documents.” Plaintiffs appealed this denial by letter dated May 21, 2007. To date, the Navy has neither responded to Plaintiffs’ appeal nor released any records in response to Plaintiffs’ Fourth Request.

United States Air Force

25. In response to Plaintiffs’ First Request, the Air Force informed Plaintiffs by letter dated December 12, 2006 that it had “conducted an appropriate search for records responsive to [Plaintiffs’] request but none were found.” Plaintiffs appealed the denial by letter dated February 6, 2007. To date, the Air Force has neither responded to Plaintiffs’ appeal nor released any records in response to Plaintiffs’ First Request.

26. By separate letter dated December 12, 2006, the Air Force informed Plaintiffs that it had “conducted an appropriate search for records responsive to [Plaintiffs’] request but none were found.” The letter did not specify whether it was in response to Plaintiffs’ Second or Third Request, or both. Plaintiffs appealed the denial by letter dated February 6, 2007. To date, the Air Force has not responded to Plaintiffs’ appeal, nor has it released any records in response to Plaintiffs’ Second or Third Request.

27. In response to Plaintiffs’ Fourth Request, the Air Force informed Plaintiffs by letter dated August 16, 2006 that it was “not the [O]ffice of Primary Responsibility (OPR) for information [Plaintiffs] requested,” and therefore, it had “faxed [Plaintiffs’] request to [its] FOIA counterparts at the Department of Intelligence Agency” Subsequently, Plaintiffs asked the Air Force by letter dated August 28, 2006 to confirm that it had conducted its own search before forwarding the request. To date, the Air Force has not responded to Plaintiffs’ letter nor has it released any records in response to Plaintiffs’ Fourth Request.

Central Intelligence Agency

28. In response to Plaintiffs' First Request, the CIA informed Plaintiffs by letter dated August 31, 2006 that it could "neither confirm nor deny the existence or nonexistence of records responsive to [Plaintiffs'] request." Plaintiffs appealed this decision by letter dated October 4, 2006. The CIA denied Plaintiffs' appeal by letter dated February 15, 2007. The CIA has not released any records in response to Plaintiffs' First Request.

29. To date, the CIA has not issued a determination, nor has it released any records in response to Plaintiffs' Second or Third Request.

30. In response to Plaintiffs' Fourth Request, the CIA informed Plaintiffs by letter dated January 26, 2007 that its "record systems are not configured in a way that would allow [it] to perform a search reasonably calculated to lead to responsive records," and therefore, it "must decline to process" the request. Plaintiffs appealed this decision by letter dated March 14, 2007. By letter dated March 28, 2007, the CIA stated that it "did not grant [Plaintiffs'] request appeal rights." To date, the CIA has issued no further response to Plaintiffs' Fourth Request nor has it released any records responsive to this request.

Office of the Director of National Intelligence

31. To date, the DNI has not issued a determination, nor has it released any records in response to any of Plaintiffs' requests.

CLAIM FOR RELIEF

32. Under FOIA, Plaintiffs have a legal right to the records they seek.

33. To date, Defendants have not released to Plaintiffs a single record responsive to Plaintiffs' requests.

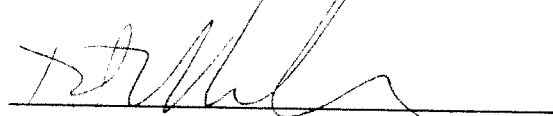
34. There is no legal basis for Defendants' refusal to release the requested records.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs request that this Court issue an order:

- (a) Declaring Defendants' refusal to disclose the requested records unlawful;
- (b) Directing Defendants to make the requested records available to Plaintiffs forthwith;
- (c) Awarding Plaintiffs the costs of this action and reasonable attorney fees as provided by 5 U.S.C. § 552(a)(4)(E); and
- (d) Granting such other and further relief as this Court may deem just and proper.

Respectfully submitted,



David C. Vladeck (DC Bar # 945063)
Kathryn A. Sabbeth¹ (NY Bar # 4265682)
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
Phone: (202) 662-9535
Fax: (202) 662-9634
Email: vladeckd@law.georgetown.edu

Attorneys for Plaintiffs

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¹ DC Bar Application pending